IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.7311 OF 2002.

WITH

CIVIL APPLICATION NO. 3055 OF 2004.

Mrs.Savitri Shivaji Kumbhar ... ...
Petitioner.

V/s

State of Maharashtra & Others..... . ...
Respondents.

Mr.R.G.Ketkar, Adv. For the petitioner.

Mr.C.R. Sonawane, AGP for Respondent Nos. 1 to 4.

Mr.G.M. Savgave, Adv. For respondent No.5.

Mr.S.Kadam for the applicant in Civil Application.

CORAM: V.G. PALSHIKAR
AND
D.B. BHOSALE, JJ.
13.9.2005

Oral Judgment: (**Per Palshikar, J.)**

By this petition the petitioner has challenged the order passed by the Caste Scrutiny Committee invalidating the certificate obtained by the petitioner whereby she was declared to be a person belonging to "Kumbhar" community which is recognised in the State of Maharashtra as other backward class. The Caste Scrutiny Committee has by its order dated

2.12.2002 considered the claim of the petitioner and observed that because the petitioner is not entitled to claim and enjoy any benefits in the State of Maharashtra because she belongs to the other backward class and had migrated to the Maharashtra after 13.10.1967 while so doing the Committee did not consider the validity of the certificate declaring the petitioner to be a person belonging to Kumbhar community which is other backward class as recognised by the State of Maharashtra.

2. The Caste Scrutiny Committee is duty bound to decide whether the case of the candidate whose certificate is sent to it belongs to the caste which is mentioned in the certificate or not. It may coincidentally decide that even if the person does belong to a particular caste or community may not be entitled to benefits flowing out of the same,. Basically it must decide as to whether the person claiming to be a person of a particular caste is so or not so. The detailed order passed by the Committee lacks such findings. It is therefore necessary that the impugned order dated 2.12.2002 is set aside and the matter is remitted back to the Caste Scrutiny Committee to decide the following:

i) Whether the petitioner belongs to "Kumbhar" caste/community to which the certificate says she does;

ii) To decide the validity of that certificate in the light of Government Resolutions and several decisions of this Court as also Supreme Court of India regarding manner in which the caste is to be verified;

iii) The Committee shall reconsider the entire aspect in the light of the documents and Vigilance Committee's Report which is already before it;

iv) This exercise be completed within six weeks from the date of receipt of this order.

3. As a sequel to our setting aside the order dated 2.12.2002 it is necessary in law that the subsequent order dated 5.12.2002 passed by the Election Commission which is solely on the basis of the order of 2.12.2002 is also set aside. In the result the petition succeeds. Rule made absolute in terms of prayer clause (b). Both the orders mentioned therein are set aside.

4. In view of the positive injunction granted by this Court there is no question of the petitioner being reinstated in the post which she held by the reason of interim order. There is also no question of asking any other order in this regard as the basic order of Election Commission dated 5.12.2002 is also set aside.

5. Parties to act on authenticated copy of this order. Copy of this judgment be forwarded to the Caste Scrutiny Committee within one week from the receipt of this order. The time of six weeks shall start running thereafter. Civil Application stands accordingly disposed of.